

IN THE SUPREME COURT FOR THE STATE OF MONTANA
Cause No. DA 09-0630

SHANE BUCHER,

Plaintiff/Appellant,

vs.

PATRICK HAROLD HUGHES,

Defendant/Respondent.

APPELLANT'S BRIEF

Plaintiff/Appellant Counsel:

Lawrence A. Anderson
Attorney at Law, P.C.
300 4th Street North
P.O. Box 2608
Great Falls, MT 59403-2608
Telephone: (406)727-8466

Defendant/Respondent Counsel:

Joslyn Hunt
Chief Appellate Defender
Appellate Defender Office
139 N. Last Chance Gulch
P.O. Box 200145
Helena, MT 59620-0145
Telephone: (406) 444-9505

Patrick Hughes
P.O. Box 961
Shelby, MT 59474

TABLE OF CONTENTS

	<u>Page(s)</u>
Table of Contents.....	i
Table of Authorities.....	ii
Statement of Issues	1
Statement of the Case	1
Statement of Facts.....	1
Standard of Review.....	3
Summary of Argument	3
Argument	4
Conclusion	6
Certificate of Service	7
Certificate of Compliance.....	8
Index of Appendix	9

TABLE OF AUTHORITIES

Page(s)

STATE STATUTES

§§ 25-9-204 and 25-9-205, MCA	5
§ 46-18-241, MCA.....	4
§§ 46-18-241 to 249, MCA	4
§ 46-18-249, MCA.....	1

STATE CASES

<i>In re T.H.</i> , 2005 MT 237, 328 Mont. 428, 121 P.3d 541, ¶ 35	3
<i>James Talcott Construction, Inc. v. P & D Land Enterprises</i> , 2006 MT 188, 333 Mont. 107, 141 P.3d 1200, ¶ 52	6
<i>Kulstad v. Manciaci</i> , 2009 MT 403, 353 Mont.467, 221 P.3d 127, ¶6.....	3
<i>Williams v. Budke</i> , 186 Mont. 71, 79, 606 P.2d 515, 519 (1980)	5
<i>Winters v. Winters</i> , 2004 MT 82, 320 Mont. 459, 87 P.3d 1005, ¶4.....	5
<i>Wombold v. Assoc. Financial Services Co.</i> , 2004 MT 297, 325 Mont. 290, 104 P.3d 1080, ¶ 30	3

OTHER AUTHORITIES

M. R. App. P. 19(4)	6
---------------------------	---

STATEMENT OF ISSUES

DID THE DISTRICT COURT ERR IN DENYING JUDGMENT INTEREST TO A CRIME VICTIM ON RESTITUTION AWARDED AGAINST THE OFFENDER?

STATEMENT OF THE CASE

This appeal is from a civil judgment arising out of a criminal proceeding. Appellant is a crime victim, who was physically maimed by the Respondent. The District Court ordered Respondent to pay him restitution in June 2003.

Respondent made only minimal payments. In 2009, the District Court enforced the restitution order by entering a civil judgment for the Appellant. Such judgments are authorized by § 46-18-249, MCA.

The District Court, however, declined to grant Appellant judgment interest. The statute indicates that interest should be allowed from the time that the restitution was ordered in 2003. Appellant therefore brings this appeal.

STATEMENT OF FACTS

Appellant Shane Bucher's leg was cut off through the recklessness of Respondent Patrick Hughes. Hughes was an off-duty sheriff's deputy. He drove a motorcycle down Main Street in Shelby at high speed while intoxicated, struck Bucher and severed his leg. (See Affidavit of Lawrence Anderson, ¶¶ 4-5, Ex. 2)

Hughes was charged with various criminal offenses, including Negligent

Vehicular Assault. (Id., ¶ 3, Ex. 1) He pled guilty and was given a six-year suspended sentence. He also was ordered to pay restitution in the amount of \$2,718.00 for Bucher's medical expenses and \$34,415.70 for his lost wages. (Id., ¶ 6, Ex. 3)

The criminal sentencing order was entered on June 5, 2003. (Id.) In the subsequent six years, Hughes paid Bucher only \$6,970. (Id., ¶ 6, Ex. 4) Because of these minimal payments, the State moved to revoke the suspended sentence in May 2009. (Id., ¶ 7, Ex. 5)

Hearings were held in June and July 2009. Hughes argued that he had made a good-faith effort to pay, and opposed revocation of his sentence. He urged the court to enter a civil judgment in Bucher's favor instead. (See Transcript of Hearing of June 29, 2009)

The District Court denied the State's motion to revoke the suspended sentence. (See Order Denying Petition for Revocation, Aug. 11, 2009) It directed Bucher's counsel to submit a proposed form of judgment.

Bucher's counsel proposed a form reciting the full amount which had been ordered on the date of sentencing:

Judgment is hereby entered against Defendant Patrick Harold Hughes in the amounts of \$34,415.70 and \$2,718.00 as of June 5, 2003.

(See Anderson Aff., ¶ 8, Ex. 7 (emphasis added))

The court rejected Bucher's proposed form of judgment, and entered a judgment proposed by Hughes. The judgment (captioned "Shane Bucher, Plaintiff vs. Patrick Harold Hughes, Defendant") was in the amount of \$29,463.70. (See Judgment, Nov. 13, 2009; Anderson Aff., ¶ 8, Ex. 8)

This form of judgment deprives Bucher of substantial interest which should have begun to accrue on the date of sentencing in June 2003. Bucher accordingly brings this appeal.

STANDARD OF REVIEW

In cases in which the issue is whether the District Court's action conforms to statutory requirements, this Court is confronted with a question of law, which is reviewed *de novo*. See *In re T.H.*, 2005 MT 237, 328 Mont. 428, 121 P.3d 541, ¶ 35 ("We review a district court's interpretation and application of statutes for correctness"); *Kulstad v. Manciaci*, 2009 MT 403, 353 Mont. 467, 221 P.3d 127, ¶6; *Wombold v. Assoc. Financial Services Co.*, 2004 MT 297, 325 Mont. 290, 104 P.3d 1080, ¶ 30 ("Issues of statutory interpretation are reviewed *de novo*").

SUMMARY OF ARGUMENT

The statute governing enforcement of restitution orders allows a victim to have "[t]he total amount" of restitution treated "as a civil judgment." Civil judgments accrue interest from the date of entry (or of the underlying order). Thus, Appellant should have been awarded interest on the full amount of

restitution, from the date of the restitution order.

ARGUMENT

THE DISTRICT COURT ERRED IN REFUSING THE CRIME VICTIM JUDGMENT INTEREST ACCRUING FROM THE DATE OF THE RESTITUTION ORDER.

Restitution orders are entered in criminal proceedings on a mandatory basis. See § 46-18-241, MCA (“a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has sustained a pecuniary loss”). Restitution is governed by detailed statutes intended to ensure compensation for victims. See §§ 46-18-241 to 249, MCA.

The last of these statutes expressly provides for enforcement by means of civil proceedings. It recites, in part:

46-18-249. Civil actions by victim. (1) The total amount that a court orders to be paid to a victim may be treated as a civil judgment against the offender and may be collected by the victim at any time, including after state supervision of the offender ends, using any method allowed by law, including execution upon a judgment, for the collection of a civil judgment.

...

(emphasis added)

This language requires that “the total amount” of a restitution order should be treated as a judgment. In the present case, the court entered judgment only for a part of that amount -- not for the total restitution ordered in 2003.

The statute requires that the total amount be “treated as a civil judgment.” A

civil judgment accrues interest from the time that the underlying decision was made. §§ 25-9-204 and 25-9-205, MCA, provide:

25-9-204. Clerk to include interest in judgment. The clerk shall include in the judgment entered up by the clerk any interest on the verdict or decision of the court, from the time it was rendered or made.

25-9-205. Amount of interest. (1) Except as provided in subsection (2), interest is payable on judgments recovered in the courts of this state and on the cost incurred to obtain or enforce a judgment at the rate of 10% per year. The interest may not be compounded. ...

(emphasis added)

For these reasons, the court in the present case should have entered a judgment in the form which was proposed by Bucher's counsel. The judgment should have been in the full amount of the restitution order, accruing interest from the date when the order was made -- June 5, 2003.

By failing to enter this form of judgment, the court denied Bucher substantial interest. Interest should have been accruing on the full judgment prior to the dates of Hughes's partial payments.

The judgment interest statute is to be applied even where the original judgment does not mention interest. See, e.g., *Winters v. Winters*, 2004 MT 82, 320 Mont. 459, 87 P.3d 1005, ¶4 (statutory judgment interest is required on child support judgment even where the original child support order was silent as to judgment interest); *Williams v. Budke*, 186 Mont. 71, 79, 606 P.2d 515, 519 (1980)

(same).

This Court, accordingly, should order the District Court to amend its judgment. The Court expressly should direct that interest accrue on the full amount of the restitution, beginning on June 5, 2003. See M. R. App. P. 19(4) ("the mandate shall contain instruction with respect to allowance of interest"); *James Talcott Construction, Inc. v. P & D Land Enterprises*, 2006 MT 188, 333 Mont. 107, 141 P.3d 1200, ¶ 52 (increase in award on appeal bears interest from date of judgment, where wrongfully denied by the District Court).

CONCLUSION

The District Court erred in its interpretation and application of §46-18-249, MCA. This Court should order that the District Court apply that statute as written. The Court should order that judgment be entered in the full amount of the June 5, 2003 restitution order, with interest accruing from that date.

Respectfully submitted on this 3 day of March 2010.



Lawrence A. Anderson
P.O. Box 2608
Great Falls, MT 59403-2608
Attorney for Plaintiff-Appellant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was duly served upon the following
by mail, hand delivery, Federal Express, or facsimile transmission, as indicated:


☒ U.S. Mail
☐ Federal Express
☐ Hand Delivery
☐ Facsimile transmission

Joslyn Hunt
Chief Appellate Defender
Office of the State Public Defender
Appellate Defender Office
139 N. Last Chance Gulch
P.O. Box 200145
Helena, MT 59620-0145

Shari M. Gianarelli
Attorney at Law
310 South Main, Suite B
Conrad, MT 59425

Patrick Hughes
P.O. Box 961
Shelby, MT 59474

DATED this 3 day of March 2010.



Treacie Burback, Legal Assistant

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Appellant's Brief is proportionately spaced using Times New Roman, 14 pt., and contains 1250 words, pursuant to Rule 27(d)(iv) M.R.App.P.

Treacie Burback
Treacie Burback, Legal Assistant

INDEX OF APPENDIX

1. Judgment, dated November 13, 2009, with attachment Order Denying Petition for Revocation of Suspended Sentence and Entry of Civil Judgment, dated August 11, 2009, filed in MT Ninth Judicial District Court, Toole County , Cause No. DC-01-028
2. Affidavit of Lawrence A. Anderson, dated January 20, 2010